

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. letter	Draft of POTUS to Donald R. Jameson (1 page)	10/19/1993	P6/b(6)
001b. note	re Donald R. Jameson (1 page)	10/18/1993	P6/b(6)
001c. letter	Draft of POTUS to Donald R. Jameson (1 page)	110/12/1993	P6/b(6)
001d. letter	Hope Jameson to POTUS (4 pages)	08/16/1993	P6/b(6)
001e. letter	Donald R. Jameson to POTUS (1 page)	n.d.	P6/b(6)
002. form	Bill Burton to Alexis Herman, Howard Paster, Marsha Scott "From the Office of the Chief of Staff" (1 page)	09/17/1993	P5 2080

COLLECTION:

Clinton Presidential Records
WHORM Subject File General
ME001
OA/Box Number: 17718

FOLDER TITLE:

042896

2006-1080-F
wr10694

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

SEP 20 1993
From the Office of the Chief of Staff
Phone: 202/456-6797 Fax: 202/456-1121

Date: 9/17/93 Response needed by: 9/20/93
COS Office Contact: Bill Burton

	Action	FYI		Action	FYI
Joan Baggett			Howard Paster		X
Rahm Emanuel			John Podesta,		
Mark Gearan			Jack Quinn		
David Gergen			Carol Rasco		
Jack Gibbons			Bob Rubin		
Marcia Hale			Eli Segal		
Alexis Herman	X		Ricki Seidman		
Nancy Hernreich			George Stephanopoulos		
Tony Lake			Christine Varney		
Bruce Lindsey			David Watkins		
Katie McGinty			Maggie Williams		
Dee Dee Myers			<u>Marsha Scott</u>	X	
Roy Neel					
Bernie Nussbaum					
Leon Panetta					

Remarks: #1. Mike Bely is head of AGA, not NGSA.
#2. These are four of the most powerful energy trade associations in Washington; they all repres. nat'l gas interests, which the President is a huge supporter of (& they can really be of help in NAFTA, e.g.). #3. I've already heard from 2 of the 4 trades who view this response as relatively insulting (and, as one put it, "Perhaps it's evidence of the many stories about the competence of the W.H. staff. ").
Question: How does this happen?

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. clipping	Note from POTUS on top of newspaper article (1 page)	04/04/1995	P5 2082

COLLECTION:

Clinton Presidential Records
WHORM Subject File-General
PU001-07
OA/Box Number: 12155

FOLDER TITLE:

107523SS

2006-1080-F
ds394

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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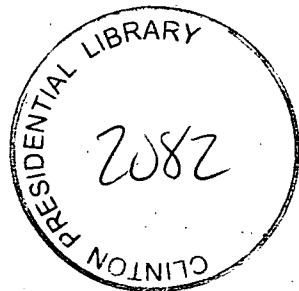
C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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THE WALL STREET JOURNAL THURSDAY, MARCH 23, 1995

Vince Foster's Death Is a Lively Business For Conspiracy Buffs

AI * * *
They Sell Videos and Raise
Cash From Conservatives:
Arianna Huffington's Role

By ELLEN JOAN POLLOCK
Staff Reporter of THE WALL STREET JOURNAL
Vincent Foster's death two years ago continues to excite conspiracy buffs. It has also become a lively business.

Newsletters, on-line computer services and, especially, videos have kept the former deputy White House counsel's memory very much alive, mainly by generating elaborate and scurrilous rumors about his suicide.

Since Mr. Foster's body was found in July 1993 in Virginia's Fort Marcy Park, two federal investigations have concluded that he shot himself after a devastating bout of depression. Two congressional panels have concurred. His family has issued a statement calling the murder rumors "despicable" and begging the conspiracy theorists to back off.

'Real Strange'

Not a chance. At least three organizations are marketing the Foster conspiracy theories. Perhaps you have caught one of a torrent of newspaper ads that spins out elaborate conspiracy tales, with headlines like, "Vincent Foster Case Still Not Closed—New Video Proves It!"

It is "real, real strange" that no soil was found on the bottom of Mr. Foster's shoes even though his body was found in the middle of the park, says Paul Mortell, a Lehman Brothers trader in Chicago, who came across that particular ad recently. "How did he get there?"

Most visible among the groups plying conspiracy theories is the Western Journalism Center, a tiny, heretofore unknown organization in California that has placed a number of ads, including the one Mr. Mortell saw. That ad calls Mr. Foster "the highest ranking U.S. official to die under mysterious and violent circumstances since JFK." For a \$35 donation it offers a 40-minute video that "You will watch... over and over again. You will want to show it to your friends."

So who is behind the Western Journalism Center? Not the Los Angeles Times, or the San Francisco Chronicle, or, for that matter, any other newspaper. The group is, instead, basically a one-man show created by conservative consultant Joseph Farah, backed in part by wealthy conservatives.

Indeed, as it turns out, all three of the major groups spreading conspiracy theories are linked to conservative activists, whose agendas include campaigning for a balanced budget and against gay rights. For some of them, the drive to portray Mr. Foster's death as something nefarious is also an opportunity to suggest that Presi-

Continued From First Page
ter's death. But she is interested in "anything that smacks of a general withholding of information. There are, you know, some unanswered questions."

For his part, WJC founder Mr. Farah, 40, is a self-described "Watergate baby" who believes that today's breed of reporter goes too soft on government. "We make no apologies for being suspicious of government," says Mr. Farah. "That's what we're trying to recapture."

Mr. Farah created the WJC in 1991, but it was dormant until it took on the Foster investigation last year. "There just seemed to be so much resistance in the mainstream press, we decided to look at it," Mr. Farah says. He ended up buying full-page newspaper ads to publicize the findings of Christopher Ruddy, a reporter who says he was forced to leave the New York Post after refusing to write about anything but Mr. Foster's death. The ads have appeared in the New York Times, Washington Post, Chicago Tribune, Los Angeles Times and other newspapers.

It was in one of those ads that Mr. Mortell, the trader, learned about the mystery of the missing soil. "That's not Rush Limbaugh making those claims," says Mr. Mortell. "That's FBI analysis." And so it is. Only the ad neglected to mention something that might have put the Chicago trader's mind at ease. The FBI lab did find mica—rock particles that litter the ground in the park—on Mr. Foster's shoes and socks.

The response to the ads, nevertheless, has been overwhelming and lucrative, according to Mr. Farah. In less than a year, Mr. Farah has collected "darn close to \$500,000" from people answering the ads and from his foundation backers, he says. His goal for the first year had been to raise between \$250,000 and \$300,000.

The money, most of which goes to bankroll more ads, is also being used to develop a list of contributors. WJC hopes to hit up these donors when it comes time to finance future projects—including an investigation of voter fraud, which Ms. Huffington and her husband blamed for his loss last November in California.

The king of Foster conspiracy theories is 30-year-old Mr. Ruddy. Since leaving the Post, he now covers the Foster case for a conservative Pittsburgh paper owned by Mr. Scaife, and has also received financial support from WJC. But Mr. Ruddy was propelled to conspiracy superstardom by James Davidson, who produced the WJC-distributed video.

Mr. Davidson is chairman of the National Taxpayers Union, which has long lobbied for a balanced-budget amendment. He also owns Strategic Investment, a newsletter that recently predicted that allegations against Mr. Clinton will "go beyond anything ever alleged in the Watergate scandal" and that the Clintons "will be eliminated from the political scene, hopelessly and totally discredited."

Mr. Davidson maintains that there is only a "one in a million possibility that [Mr. Foster's death] was actually a suicide. You don't have to be a seer to

THE PRESIDENT HAS SEEN

that carpet fibers were found on his clothes—suggesting that the body was rolled up in a carpet and moved.

The Fiske report explains that Mr. Foster's thumb was caught between the trigger and trigger guard of the gun, that because his body was on an incline, gravity drew his blood away from the head wound, and that a substance consistent with powder residue was found on his soft palate. Fiske investigators found that Mr. Foster was in fact right-handed. And the report says that if the body had been transported, "substantially greater contamination of skin surfaces and clothing by spilled and/or smeared blood would have been unavoidable," and that in fact, once the body was moved to the morgue, "substantial blood loss did occur."

The latest entry in the conspiracy market, "The Death of Vince Foster—What Really Happened," is being distributed by Jeremiah Films, a Christian video firm. Released in February, it has sold more

than 3,500 copies. Mr. Ruddy is also featured in this video, which was produced by Citizens for Honest Government, a conservative group headed by Jeremiah's owner.

Jeremiah's publishing arm has also been negotiating to distribute "The Murder of Vincent Foster," a self-published book by Michael Kellett. "There is no doubt," writes Mr. Kellett in an open letter to the Clintons. "I... hereby accuse the both of you of being responsible for, and the initiation and orchestration of, the murder of Vincent W. Foster, Jr." If Jeremiah does publish the book, says Patrick Matrisciana, Jeremiah's owner, it will probably come up with a new title and make other changes that are "more stylistic than substantive."

Jeremiah also distributes another popular anti-Clinton video made by Citizens for Honest Government, "The Clinton Chronicles," which has sold 150,000 copies. These more political tracts are departures

for Jeremiah. Its more typical products reveal "heart breaking accounts of families and lives destroyed by the Mormon Church" and show that Halloween glorifies "Pagan occultism," according to its literature.

The company also has made anti-homosexual videos that have been used in campaigns against gay civil-rights measures. One video features kissing homosexual couples, many in flamboyant garb, at a Washington march that, according to the video, was "funded in part by the presidential inauguration committee." The video features one gay man saying of Mr. Clinton, "He's cute!" and warns that civil-rights protection of gays will lead to taxpayer funding of sex-change operations.

"We try to hit issues that are not basically touched by the mainstream media," Jeremiah's Mr. Matrisciana says. "We basically espouse what could be considered old-time values. I think the average American needs to know."

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. note Notes re: Heymann (1 page)

n.d.

P5

2083

COLLECTION:

Clinton Presidential Records
Chief of Staff
David Gergen
OA/Box Number: 2805

FOLDER TITLE:

[Document Request re: Vince Foster] [loose]

Bevin Maloney
2006-1080-F
bm651

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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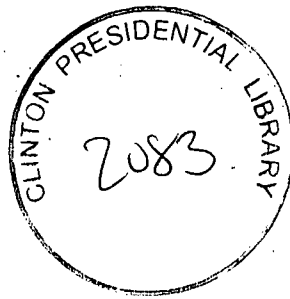
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CLINTON LIBRARY PHOTOCOPY



File
Foster, Vince
(already have file
made up - yellow)

Phil Heyman

Recommendation: to release in hands of

investigator -
Park Police -

they will want to look at the
circumstances and finding of
not -

whether they will release -
leave it to them -

Send question relating to the

Chances are they will release it
at some point -
if they find there is

- Circumstances under which
it was found -
- our best guess -

Don't take that risk if
I were you -

Some coming up from our
people - too much if correct if
inspiring from buying to end us
exercised by people in with
involved directly - 1 vince

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For Steve Neuwirth and Cliff Sloan from Marvin Krislov re: FOIA status of White House employee's personal notes provided to an agency (8 pages)	10/28/1993	P5 2084
002. memo dup	For Steve Neuwirth and Cliff Sloan from Marvin Krislov re: FOIA status of White House employee's personal notes provided to an agency (8 pages)	10/28/1993	P5
003. letter	To Major Robert Hines of the United States Park Police from Bernard Nussbaum re: FOIA request (2 pages)	10/14/1993	P5 2085
004. memo	For Cliff Sloan from Marvin Krislov re: FOIA status of White House employee's personal notes provided to an agency (7 pages)	10/7/1993	P5 2086
005. letter dup	To Major Robert Hines of the United States Park Police from Bernard Nussbaum re: FOIA request (2 pages)	10/14/1993	P5
006. memo dup	For Cliff Sloan from Marvin Krislov re: FOIA status of White House employee's personal notes provided to an agency (7 pages)	10/07/1993	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Marvin Krislov
OA/Box Number: 6798

FOLDER TITLE:

Foster Notes- FOIA [Freedom of Information Act]

Bevin Maloney
2006-1080-F
bm555

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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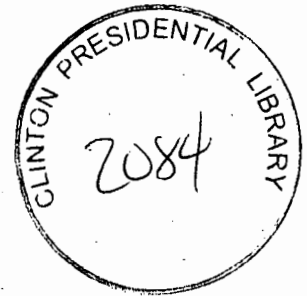
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CLINTON LIBRARY PHOTOCOPY

THE WHITE HOUSE
WASHINGTON



**DRAFT OPINION
ATTORNEY/CLIENT PRIVILEGED INFORMATION**

October 28, 1993

MEMORANDUM FOR STEVE NEUWIRTH
ASSOCIATE COUNSEL TO THE PRESIDENT

CLIFF SLOAN
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: MARVIN KRISLOV
SPECIAL COUNSEL TO THE PRESIDENT

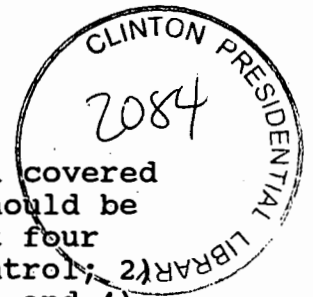
SUBJECT: FOIA Status of White House Employee's Personal
Notes Provided to An Agency

You asked me to research the status of a White House employee's personal notes, including calendars and logs, which were turned over to a federal agency in the course of a federal investigation. Specifically, you asked me to determine whether such notes would remain White House property and therefore exempt from the Freedom of Information Act (FOIA), or whether they had become transformed into agency records covered under FOIA.

My preliminary research leads me to conclude that these notes probably cannot be considered solely White House documents since they have become part of the agency's investigative files. However, FOIA specifically authorizes nondisclosure of documents when their production intrudes upon personal privacy and I believe the case law and equity strongly argue for the application of the privacy exemptions in this instance.

Here is a summary of the various arguments against disclosure and an evaluation of their merits.

1. The argument that the notes are still White House documents appears unlikely to succeed if challenged in court. As a threshold matter, materials whose production is sought under FOIA must be agency records. 5 U.S.C. § 552(a)(4)(B). It is indisputable that the notes were not agency records when they were made by the White House employee. See Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980) (Presidential aide's telephone notes not agency records); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Office of Legal Counsel part of President's Office exempt from FOIA). However, non-agency records may be



transformed into agency records when they are placed in a covered agency's files. In determining whether such documents should be viewed as "agency records" under FOIA, the courts look at four factors: whether the documents are 1) in the agency's control; 2) created within the agency; 3) part of the agency's files; and 4) used by the agency for any purpose. Kissinger, supra, 445 U.S. at 157 (holding that Dr. Kissinger's telephone conversation notes in Office of President not agency records when notes were transferred to State Department).

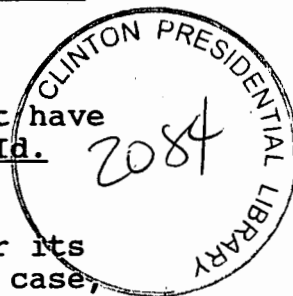
Applying these four factors to the notes in question, it appears likely that the notes would be deemed records of the investigatory agency. The notes now are in the agency's control, part of the agency's file, and presumably are being used by the agency in its investigation. These notes have not simply been transferred to the four walls of the investigatory agency, but are being utilized by the agency in conducting its business. Compare, e.g., Wolfe v. Department of Health and Human Services, 711 F.2d 1077, (D.C. Cir. 1983) (HHS Chief of Staff's transition team report housed at agency but not part of agency files or resources not considered agency records).

However, the question has also arisen whether the President may preserve the Presidential character of documents by indicating to the receiving agency that he still intends to control their use and distribution. The case law is limited on this issue, and I have located no cases specifically discussing Presidential control of documents released to covered agencies.

Two older cases, Goland v. Central Intelligence Agency, 607 F.2d 339, 347 (D.C. Cir. 1978), vacated in part on other grounds, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980), and Holy Spirit Ass'n v. Central Intelligence Agency, 636 F.2d 838, 841-842 (D.C. Cir. 1980) suggest that under certain circumstances an entity exempt from FOIA may maintain control over a document turned over to a covered agency. In Goland, a House Committee held a secret hearing in executive session regarding the CIA structure and intelligence methods. The Committee stamped "Secret" on both the interior cover page and the first page of the text. The CIA used the document only for "internal reference purposes" in connection with the legislation affecting the agency. Id. The Court held that the hearing transcript had not become an agency record, because Congress had evinced its intent to maintain control and because the CIA's limited use revealed that the document had not become agency property. Id.

In Holy Spirit, the D.C. Circuit held that Congress had relinquished control when it furnished secret hearings documents to the CIA for safekeeping. 636 F.2d at 841. Relying on the teachings of Goland, the Holy Spirit panel reasoned that Congress had not indicated its intent to retain control over the

documents. Id. at 841-842. The Court found that neither the circumstances of the documents' creation nor the conditions of their transfer demonstrated Congress' intent to keep control of the documents. Id. at 842; but see United States Department of Justice v. Tax Analysts, 492 U.S. 136, 147 (1989) (stating drafters' intent irrelevant in determining whether outside document had become agency record). However, Holy Spirit explicitly refused to adopt the position that Congress must have issued written instructions at the time of the transfer. Id.



While Holy Spirit suggests that, under certain circumstances, a non-covered entity may retain control over its documents, its precedential value may be limited. In that case, the reasons for providing the documents to the covered agency, the CIA, were disputed by the parties, and it is unclear to what extent the Congressional documents were used by the CIA and could be considered agency records. Id. at 841-842. Moreover, the possibility of retaining control raised in Holy Spirit may be distinguished from a situation where White House documents played a role in a covered agency's investigation or law enforcement activity.

Although this office could certainly stamp "secret" or some other legend on documents turned over to investigating agencies, that, standing alone, would not appear to be sufficient even under Goland. What the agency does with the document is critical. Here, for instance, it appears improbable to argue that the notes have not become part of the investigating agency's property. See, e.g., Lykins v. United States Department of Justice, 725 F.2d 1455 (D.C. Cir. 1984) (pre-sentence reports turned over to Parole Commission "agency records" even though originating in federal courts).

In another D.C. Circuit case, McGehee v. CIA, 697 F.2d 1095, 1111 (D.C. Cir. 1983) (dictum), Judge Edwards suggested a model by which an agency holding documents covered under FOIA could indicate to another agency receiving copies of the documents that the original agency wished to maintain control over those documents (see attachment). However, the facts in McGehee are easily distinguishable from those at issue here. McGehee involved the refusal of the CIA to turn over materials it had received from the State Department and the FBI, all three agencies covered under FOIA. The D.C. Circuit concluded that the CIA copies constituted agency records of the CIA. 697 F.2d at 1109. Judge Edwards' suggested referral procedure addressed the issue of whether the CIA was improperly withholding the documents, thus, his proposal aimed at avoiding inter-agency confusion and bureaucratic delays in processing requests. Id. at 1111-12.

Thus, McGehee does not stand for the proposition that the White House may maintain the Presidential character of documents

even when they are transferred to an agency covered by FOIA. In dictum, the McGehee panel did state:

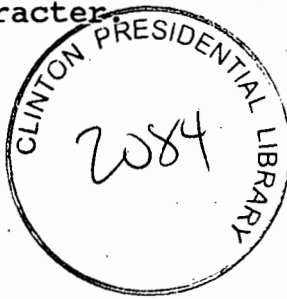
[S]pecial policy considerations militate against a rule compelling disclosure of records originating in [Congress, the judiciary, the President or his personal staff] merely because such documents happen to come into the possession of an agency.

Id. at 1107 (citing Kissinger, supra). However, the fact that these notes have been integrated into the investigatory agency's files suggest that these notes did not simply "happen to come into possession of an agency," but became part of its business.

The only explicit discussion of methods of preserving the Presidential character of documents that I have located is found in a 1977 Office of Legal Counsel (OLC) memorandum opinion. 2 Op. Off. Legal Counsel 379 (1978). The OLC opinion addresses the issue of protecting the privacy of private persons who write to the President and whose letters are subsequently referred to the federal agencies for response. The Counsel to the President had expressed concern that the correspondents' privacy might be invaded if the agencies disclosed their names in response to FOIA requests. The OLC opinion considers three options: 1) demonstrable bailment (i.e., a stamped legend indicating that the President wished to maintain ownership and control over the documents); 2) sanitized referrals which would then be returned to the White House for response; and 3) reliance on the privacy exemption (exemption #6) of FOIA (discussed in detail, infra). Id.

The OLC opinion (which was written after Goland but before Kissinger and the subsequent interpreting cases) recommends creating Presidential guidance for the responding agencies that would recommend deleting personal identifying information, as contemplated by the privacy exemption. Id. at 382. The opinion cautions against the bailment option, stating that such an assertion would be legally questionable since it would deprive agencies of their own records and might violate the Federal Records Act. Id. at 380.

As applied to the facts at issue here, the OLC opinion suggests that the bailment option (even if it were taken at this late stage) would have questionable validity. Under the Kissinger analysis, the notes appear to have become agency records under the control and use of the investigatory agency. Depending upon the conditions of the transfer to the investigating agency, it is possible that Goland and Holy Spirit could support an assertion that these documents have retained their Presidential character.

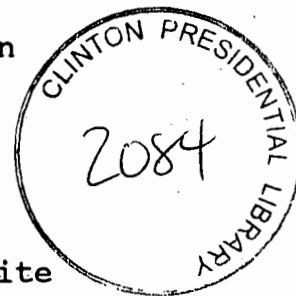


CLINTON LIBRARY PHOTOCOPY

2. The argument that the notes are not agency records, but personal records, is unlikely to succeed in these circumstances.

One D.C. Circuit case concluded that appointment calendars and phone logs kept by an Assistant Attorney General (AAG) in the course of business were not "agency records," but were personal documents created for the convenience of the employee, not the agency. Bureau of National Affairs v. U.S. Dept. of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984). Daily agendas circulated to the AAG's staff qualified as "agency records," however, since they had been created for the convenience of the official staff. Id. at 1495. Applying the Kissinger factors, the panel stated:

[T]he statute cannot be extended to sweep into FOIA's reach personal papers that may "relate to" an employee's work--such as a personal diary containing an individual's private reflections on his or her work--but which the individual does not rely upon to perform his or her duties. In this regard, use of the documents by employees other than the author is an important consideration.



Although the notes at issue here, specifically, the White House employee's logs and calendars are analogous to those non-agency records in the BNA case, the investigatory agency is presumably utilizing those documents for a different purpose. Accordingly, under these circumstances, the argument that these notes are not records of the investigatory agency is likely to fail.

3. These materials qualify for the privacy exemption (#6) under FOIA.

FOIA exempts from the disclosure requirement categories of materials including "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) (exemption 6). To qualify for this exemption, we would need to establish: 1) that the materials qualify as "similar files" and 2) that the public interest in disclosure does not outweigh the privacy interest at stake. While the burdens of proof differ for exemptions 6 and 7 (discussed infra), the considerations are basically the same.

First, in applying the threshold test for exemption #6, courts look at the nature of the information, not at "the nature of the files." Department of State v. Washington Post, 456 U.S. 595, 599, 602-603 (1981) (citizenship information in State Department files within reach of exemption 6). This threshold requirement is "minimal," Washington Post v. HHS, 690 F.2d 252, 260 (D.C. Circuit), since it is satisfied if the information

"applies to a particular individual." Washington Post v. Department of State, supra, 456 U.S. at 602. In a recent case, the D.C. Circuit concluded that the tape recording of the last moments of the Challenger space shuttle met the threshold requirement, because it applied to particular individuals. New York Times Co. v. NASA, 920 F.2d 1002, 1009-1010 (D.C. Cir. 1990) (en banc). According to the en banc majority, the recording revealed the astronauts' thoughts and feelings before their deaths, and provided information "beyond the content of the words in the printed transcript." Id. at 1004. However, it was undisputed that the taped words did not expose the "personal lives of the astronauts." Id. at 1005.

Following the same logic, even if the content of one of the notes has been published, the author's handwriting may reveal personal information. As to those other notes that have not been published, the argument is even stronger that the materials contain information pertaining to the individual and may in fact expose the author's personal life. Additionally, the NASA case establishes that families of deceased persons may claim that disclosure would violate their privacy rights. See id. at 1010 (remanding for determination of whether disclosure intruded upon astronauts or families' privacy).

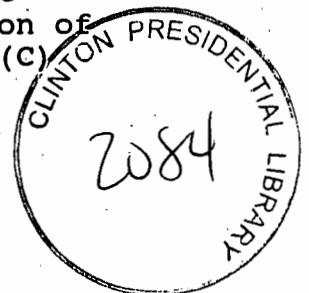
Should this matter be litigated, a court would then need to balance the privacy interest of the author (and his family) against the public interest in disclosure. A district court might review the disputed materials in camera; remedies include partial redaction. See, e.g., Department of Air Force v. Rose, 425 U.S. 352, 381-82 (remanding to the district court for in camera review). While I do not know the content of these notes, I suspect that a reviewing court would be sympathetic to the family's privacy concerns.

4. These materials qualify for the privacy prong of the law enforcement exemption (#7) under FOIA.

Closed related to exemption 6, but imposing a lesser burden on the withholding agency, is exemption 7(c). United States Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 780 (1989) (disclosing criminal rap sheets to third parties prohibited by exemption 7(c)). Under this exemption, an agency may refuse to disclose:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.

5 U.S.C. § 552(b) (7) (C).



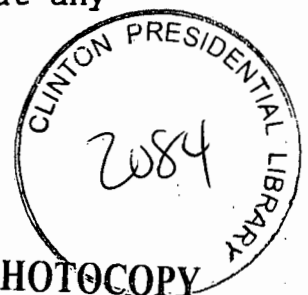
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As with exemption 6 cases, any reviewing court must balance the public interest in disclosure against the privacy interests at stake. The determination "must turn on the nature of the requested document and its relationship to 'the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny.'" Reporters Committee, 489 U.S. at 772.

Disclosure of an individual's name in a criminal investigative file raises serious privacy concerns: "exemption 7(c) takes particular note of the 'strong interest' of individuals, whether they be suspects, witnesses, or investigators, 'in not being associated unwarrantedly with alleged criminal activity.'" Fitzgibbon v. CIA, 911 F.2d 755, 767 (D.C. Cir. 1990) (allowing withholding of individual named in FBI investigative file). That some information may have been previously released elsewhere does not dampen an individual's privacy interest, even over time. Id. (allowing withholding of information concerning individual named in CIA investigation). Moreover, case law indicates that government officials do not lose their interest in privacy. See, e.g., Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981) (approving nondisclosure under 7(c) by Watergate Special Prosecution Force of closing memoranda).

In the instant matter, any challenge will turn on the courts' evaluation of the relevance of the notes to any public interest in disclosure. Compare, e.g., Washington Post v. U.S. Dep't of Health, 690 F.2d 252, 260 (D.C. Cir. 1982) (public interest in government consultants' financial disclosure outweighed minimal privacy interest) with Multnomah County Medical Society v. Scott, 825 F.2d 1410, 1415 (9th Cir. 1987) (Medicare beneficiaries' privacy concerns outweighed public interest in disclosure). We might expect that, by the time any challenge reaches a district court, the multiple investigations should have ceased. At least one case suggests that, where various agencies have already completed their investigations without any further prospect of prosecution, the public interest in disclosure may be diminished. Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981). The court's teachings in that case should apply to the instant matter: "[T]he legitimate and substantial privacy interests of individuals . . . cannot be overridden by a general public curiosity." Id.

Assuming that the notes do not reveal significant, previously undisclosed information, it appears likely that any reviewing court would honor a decision to withhold these documents based on exemption 7(c).



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Recommendation

It is therefore recommended that the investigatory agency be told that the President believes the notes in question to be exempt from disclosure under FOIA.



October 14, 1993



Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Request of William Neumann

Dear Mr. Hines:

You have asked for our opinion regarding Mr. Neumann's request for documents previously provided by our office. We have reviewed these documents, and, for the reasons stated below, we have concluded that such documents should not be disclosed.

First, the documents are not "agency records" as defined by FOIA. See 5 U.S.C. § 552(a)(4)(B). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, does not constitute an "agency" for the purposes of FOIA. See, e.g., Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel's Office exempt from FOIA). This office has indicated that these documents must remain within the control of the White House, and therefore their status has not changed despite the fact that they have been shown to the Park Service.¹

Second, even assuming arguendo that these White House documents have become agency records of the Park Service, they are exempt from disclosure both under FOIA's exemption 6 (the privacy exemption) and exemption 7(c) (the privacy exemption in the context of a law enforcement investigation). See 5 U.S.C. § 552(b)(6) & (b)(7)(c). Disclosure of these documents would violate the privacy rights of a former White House employee and his family, and would not serve any significant public interest. As the D.C. Circuit has cautioned, "[T]he legitimate and substantial privacy interests of individuals. . . cannot be overridden by general public curiosity." Fund for Constitutional

¹ Moreover, the requested documents do not qualify as "agency records" since they were primarily personal documents prepared for the convenience of the employee and were not distributed. See, e.g., Bureau of National Affairs v. U.S. Dep't of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984) (personal diary, appointment calendars, phone logs not "agency records.")

Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981).

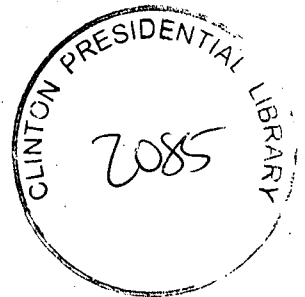
Third, the actual note should not be disclosed because there is a significant privacy interest, even though the note's contents have already been published. The handwritten note provides intimate information about the White House employee "beyond the content of the words in the printed transcript." New York Times Co. v. NASA, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (en banc) (discussing tape recording of astronauts' last conversation). Moreover, any public interest in disclosure of the actual note is diminished since its contents have been previously published.

Enclosed please find the copies of the documents as you requested.

We appreciate your cooperation with this matter. If you wish to discuss this request further, please feel free to contact Associate Counsel Cliff Sloan at 456-7900.

Sincerely,

Bernard W. Nussbaum
Counsel to the President





**DRAFT OPINION
ATTORNEY/CLIENT PRIVILEGED INFORMATION**

October 7, 1993

MEMORANDUM FOR CLIFF SLOAN
ASSOCIATE COUNSEL TO THE PRESIDENT

FROM: MARVIN KRISLOV
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: FOIA Status of White House Employee's Personal
Notes Provided to An Agency

You asked me to research the status of a White House employee's personal notes, including calendars and logs, which were turned over to a federal agency in the course of a federal investigation. Specifically, you asked me to determine whether such notes would remain White House property and therefore exempt from the Freedom of Information Act (FOIA), or whether they had become transformed into agency records covered under FOIA.

My preliminary research leads me to conclude that these notes probably cannot be considered solely White House documents since they have become part of the agency's investigative files. However, FOIA specifically authorizes nondisclosure of documents when their production intrudes upon personal privacy and I believe the case law and equity strongly argue for the application of the privacy exemptions in this instance.

Here is a summary of the various arguments against disclosure and an evaluation of their merits.

1. The argument that the notes are still White House documents appears unlikely to succeed if challenged in court. As a threshold matter, materials whose production is sought under FOIA must be agency records. 5 U.S.C. § 552(a)(4)(B). It is indisputable that the notes were not agency records when they were made by the White House employee. See Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980) (Presidential aide's telephone notes not agency records); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Office of Legal Counsel part of President's Office exempt from FOIA). However, non-agency records may be transformed into agency records when they are placed in a covered agency's files. In determining whether such documents should be viewed as "agency records" under FOIA, the courts look at four

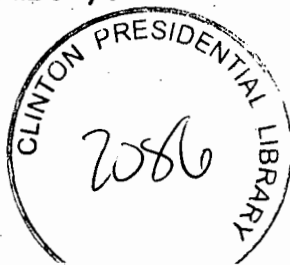
factors: whether the documents are in the agency's control; 2) created within the agency; 3) part of the agency's files; and 4) used by the agency for any purpose. Kissinger, supra, 445 U.S. at 157 (holding that Dr. Kissinger's telephone conversation notes in Office of President not agency records when notes were transferred to State Department).

Applying these four factors to the notes in question, it appears likely that the notes would be deemed records of the investigatory agency. The notes now are in the agency's control, part of the agency's file, and presumably are being used by the agency in its investigation. These notes have not simply been transferred to the four walls of the investigatory agency, but are being utilized by the agency in conducting its business. Compare, e.g., Wolfe v. Department of Health and Human Services, 711 F.2d 1077, (D.C. Cir. 1983) (HHS Chief of Staff's transition team report housed at agency but not part of agency files or resources not considered agency records).

However, the question has also arisen whether the President may preserve the Presidential character of documents by indicating to the receiving agency that he still intends to control their use and distribution. The case law is limited on this issue, and I have located no cases specifically discussing Presidential control of documents released to covered agencies.

One older case, Goland v. Central Intelligence Agency, 607 F.2d 339, 347 (D.C. Cir. 1978), vacated in part on other grounds, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980), suggests that under certain circumstances an entity exempt from FOIA may maintain control over a document turned over to a covered agency. In Goland, a House Committee held a secret hearing in executive session regarding the CIA structure and intelligence methods. The Committee stamped "Secret" on both the interior cover page and the first page of the text. The CIA used the document only for "internal reference purposes" in connection with the legislation affecting the agency. Id. The hearing transcript had not become an agency record, because Congress had evinced its intent to maintain control and because the CIA's limited use revealed that the document had not become agency property. Id.

While this office could certainly stamp "secret" or some other legend on documents turned over to investigating agencies, that, standing alone, would not appear to be sufficient even under Goland. What the agency does with the document is critical. Here, for instance, it appears improbable to argue that the notes have not become part of the investigating agency's property. See, e.g., Lykins v. United States Department of Justice, 725 F.2d 1455 (D.C. Cir. 1984) (pre-sentence reports turned over to Parole Commission "agency records" even though originating in federal courts).



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In a more recent case, McGehee v. CIA, 697 F.2d 1095, 1111 (D.C. Cir. 1983) (dictum), Judge Edwards suggested a model by which an agency holding documents covered under FOIA could indicate to another agency receiving copies of the documents that the original agency wished to maintain control over those documents (see attachment). However, the facts in McGehee are easily distinguishable from those at issue here. McGehee involved the refusal of the CIA to turn over materials it had received from the State Department and the FBI, all three agencies covered under FOIA. The D.C. Circuit concluded that the CIA copies constituted agency records of the CIA. 697 F.2d at 1109. Judge Edwards' suggested referral procedure addressed the issue of whether the CIA was improperly withholding the documents, thus, his proposal aimed at avoiding inter-agency confusion and bureaucratic delays in processing requests. Id. at 1111-12.

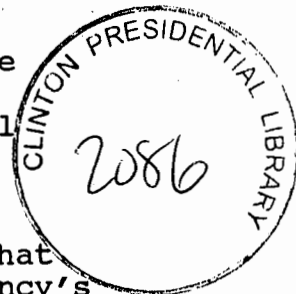
Thus, McGehee does not stand for the proposition that the White House may maintain the Presidential character of documents even when they are transferred to an agency covered by FOIA. In dictum, the McGehee panel did state:

[S]pecial policy considerations militate against a rule compelling disclosure of records originating in [Congress, the judiciary, the President or his personal staff] merely because such documents happen to come into the possession of an agency.

Id. at 1107 (citing Kissinger, supra). However, the fact that these notes have been integrated into the investigatory agency's files suggest that these notes did not simply "happen to come into possession of an agency," but became part of its business.

The only explicit discussion of methods of preserving the Presidential character of documents that I have located is found in a 1977 Office of Legal Counsel (OLC) memorandum opinion. 2 Op. Off. Legal Counsel 379 (1978). The OLC opinion addresses the issue of protecting the privacy of private persons who write to the President and whose letters are subsequently referred to the federal agencies for response. The Counsel to the President had expressed concern that the correspondents' privacy might be invaded if the agencies disclosed their names in response to FOIA requests. The OLC opinion considers three options: 1) demonstrable bailment (i.e., a stamped legend indicating that the President wished to maintain ownership and control over the documents); 2) sanitized referrals which would then be returned to the White House for response; and 3) reliance on the privacy exemption (exemption #6) of FOIA (discussed in detail, infra). Id.

The OLC opinion (which was written after Goland but before Kissinger and the subsequent interpreting cases) recommends



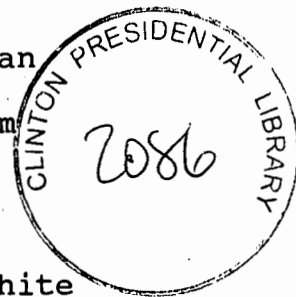
creating Presidential guidance for the responding agencies that would recommend deleting personal identifying information, as contemplated by the privacy exemption. Id. at 382. The opinion cautions against the bailment option, stating that such an assertion would be legally questionable since it would deprive agencies of their own records and might violate the Federal Records Act. Id. at 380.

As applied to the facts at issue here, the OLC opinion suggests that the bailment option (even if it were taken at this late stage) would have questionable validity. Under the Kissinger analysis, the notes appear to have become agency records under the control and use of the investigatory agency.

2. The argument that the notes are not agency records, but personal records, is unlikely to succeed in these circumstances.

One D.C. Circuit case concluded that appointment calendars and phone logs kept by an Assistant Attorney General (AAG) in the course of business were not "agency records," but were personal documents created for the convenience of the employee, not the agency. Bureau of National Affairs v. U.S. Dept. of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984). Daily agendas circulated to the AAG's staff qualified as "agency records," however, since they had been created for the convenience of the official staff. Id. at 1495. Applying the Kissinger factors, the panel stated:

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3. These materials qualify for the privacy exemption (#6) under FOIA.

FOIA exempts from the disclosure requirement categories of materials including "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6) (exemption 6). To qualify for this exemption, we would need to

establish: 1) that the materials qualify as "similar files" and 2) that the public interest in disclosure does not outweigh the privacy interest at stake. While the burdens of proof differ for exemptions 6 and 7 (discussed infra), the considerations are basically the same.

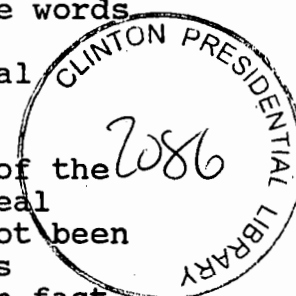
First, in applying the threshold test for exemption #6, courts look at the nature of the information, not at "the nature of the files." Department of State v. Washington Post, 456 U.S. 595, 599, 602-603 (1981) (citizenship information in State Department files within reach of exemption 6). This threshold requirement is "minimal," Washington Post v. HHS, 690 F.2d 252, 260 (D.C. Circuit), since it is satisfied if the information "applies to a particular individual." Washington Post v. Department of State, supra, 456 U.S. at 602. In a recent case, the D.C. Circuit concluded that the tape recording of the last moments of the Challenger space shuttle met the threshold requirement, because it applied to particular individuals. New York Times Co. v. NASA, 920 F.2d 1002, 1009-1010 (D.C. Cir. 1990) (en banc). According to the en banc majority, the recording revealed the astronauts' thoughts and feelings before their deaths, and provided information "beyond the content of the words in the printed transcript." Id. at 1004. However, it was undisputed that the taped words did not expose the "personal lives of the astronauts." Id. at 1005.

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Should this matter be litigated, a court would then need to balance the privacy interest of the author (and his family) against the public interest in disclosure. A district court might review the disputed materials in camera; remedies include partial redaction. See, e.g., Department of Air Force v. Rose, 425 U.S. 352, 381-82 (remanding to the district court for in camera review). While I do not know the content of these notes, I suspect that a reviewing court would be sympathetic to the family's privacy concerns.

4. These materials qualify for the privacy prong of the law enforcement exemption (#7) under FOIA.

Closed related to exemption 6, but imposing a lesser burden on the withholding agency, is exemption 7(c). United States



Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 780 (1989) (disclosing criminal rap sheets to third parties prohibited by exemption 7(c)). Under this exemption, an agency may refuse to disclose:

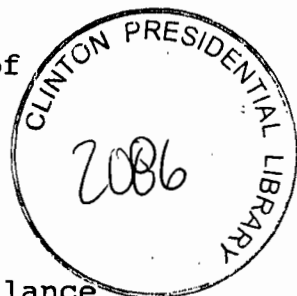
records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy.

5 U.S.C. § 552(b)(7)(C).

As with exemption 6 cases, any reviewing court must balance the public interest in disclosure against the privacy interests at stake. The determination "must turn on the nature of the requested document and its relationship to 'the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny.'" Reporters Committee, 489 U.S. at 772.

Disclosure of an individual's name in a criminal investigative file raises serious privacy concerns: "exemption 7(c) takes particular note of the 'strong interest' of individuals, whether they be suspects, witnesses, or investigators, 'in not being associated unwarrantedly with alleged criminal activity.'" Fitzgibbon v. CIA, 911 F.2d 755, 767 (D.C. Cir. 1990) (allowing withholding of individual named in FBI investigative file). That some information may have been previously released elsewhere does not dampen an individual's privacy interest, even over time. Id. (allowing withholding of information concerning individual named in CIA investigation). Moreover, case law indicates that government officials do not lose their interest in privacy. See, e.g., Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981) (approving nondisclosure under 7(c) by Watergate Special Prosecution Force of closing memoranda).

In the instant matter, any challenge will turn on the courts' evaluation of the relevance of the notes to any public interest in disclosure. Compare, e.g., Washington Post v. U.S. Dep't of Health, 690 F.2d 252, 260 (D.C. Cir. 1982) (public interest in government consultants' financial disclosure outweighed minimal privacy interest) with Multnomah County Medical Society v. Scott, 825 F.2d 1410, 1415 (9th Cir. 1987) (Medicare beneficiaries' privacy concerns outweighed public interest in disclosure). We might expect that, by the time any challenge reaches a district court, the multiple investigations should have ceased. At least one case suggests that, where various agencies have already completed their investigations without any further prospect of prosecution, the public interest in disclosure may be diminished. Fund for Constitutional

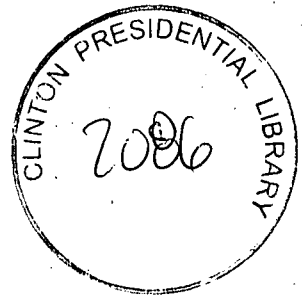


Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981). The court's teachings in that case should apply to the instant matter: "[T]he legitimate and substantial privacy interests of individuals . . . cannot be overridden by a general public curiosity." Id.

Assuming that the notes do not reveal significant, previously undisclosed information, it appears likely that any reviewing court would honor a decision to withhold these documents based on exemption 7(c).

Recommendation

It is therefore recommended that the investigatory agency be told that the President believes the notes in question to be exempt from disclosure under FOIA.



Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003e. letter	To Major Hines of Park Police from Bernard Nussbaum re: FOIA request (2 pages)	11/08/1993	P5 2087
003f. list	Phone No. (Partial) (1 page)	07/20/1993	P6/b(6)
003g. letter	To Major Hine of the Park Police from Bernard Nussbaum re: FOIA request (2 pages)	11/08/1993	P5 2087 Dup.
003h. report	U.S. Park Police: Death Investigation- Review of documents from Vincent Foster's office (1 page)	n.d.	b(7)(E)
003i. report	U.S. Park Police: Death Investigation (1 page)	n.d.	b(7)(E)
003j. report	U.S. Park Police: Death Investigation- Phone Log (1 page)	n.d.	b(7)(E)
003k. report	U.S. Park Police: Communciation record (1 page)	n.d.	b(7)(E)
003l. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/21/1994	P5 2088
003m. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5 2089
003n. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/24/1994	P5 2090
003o. note	Regarding letter (1 page)	n.d.	P5 2091
003p. draft	Draft of letter (1 page)	01/11/1994	P5 2092

COLLECTION:

Clinton Presidential Records
Counsel's Office
Marvin Krislov
OA/Box Number: 6798

FOLDER TITLE:

[Freedom of Information Act request from William Neuman about Vince Foster]

Bevin Maloney
2006-1080-F
bm556

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003q. letter	Draft of letter to Major Hines of Park Police from Bernard Nussbaum (1 page)	01/11/1994	P5 2093
003r. draft	Draft of letter to Major Hines from Bernard Nussbaum (2 pages)	01/04/1994	P5 2094
003s. letter	To Major Hines from Bernard Nussbaum re: FOIA request (2 pages)	01/21/1994	P5 2088 Dup.
003t. note	Notes on documents (2 pages)	n.d.	P5 2095
003u. letter	To Major Hines from Bernard Nussbaum re: FOIA request (2 pages)	11/08/1993	P5
dup of 003g 003v. report	U.S. Park Police: Death Investigation- Review of Documents from Vincent Foster's Office (1 page)	n.d.	b(7)(E)
003w. report	U.S. Park Police: Death Investigation- July 20, 1993 Phone Log (1 page)	n.d.	b(7)(E)
003x. report	U.S. Park Police: Death Investigation- July 30 (1 page)	n.d.	b(7)(E)
003y. report	U.S. Park Police Communication record (1 page)	n.d.	b(7)(E)
003z. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	11/08/1993	P5
dup of 003g 003za. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5 2089 Dup.
dup of 003za 003zb. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5

COLLECTION:

Clinton Presidential Records
Counsel's Office
Marvin Krislov
OA/Box Number: 6798

FOLDER TITLE:

[Freedom of Information Act request from William Neuman about Vince Foster]

Bevin Maloney
2006-1080-F
bm556

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
003zc. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5
<i>dup of 003za</i> 003zd. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5
<i>dup of 003za</i> 003ze. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (2 pages)	01/31/1994	P5 2096
003zf. draft	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (1 page)	01/24/1994	P5 2097
003zg. letter	To Major Hines of the Park Police from Berdnard Nussbaum re: FOIA request (1 page)	01/19/1994	P5 2098

COLLECTION:

Clinton Presidential Records
Counsel's Office
Marvin Krislov
OA/Box Number: 6798

FOLDER TITLE:

[Freedom of Information Act request from William Neuman about Vince Foster]

Bevin Maloney
2006-1080-F
bm556

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
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- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

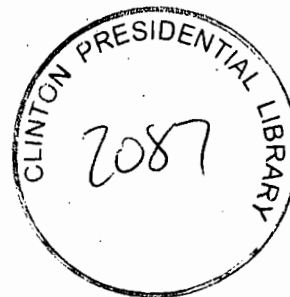
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

THE WHITE HOUSE
WASHINGTON



November 8, 1993

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the above-referenced request, under the Freedom of Information Act, for documents previously forwarded to the National Park Service by the White House Counsel's Office. We have reviewed these documents, and, for the reasons stated below, have concluded that such documents should not be disclosed.

First, the documents requested are not "agency records" subject to the FOIA. See 5 U.S.C. § 552(a)(4)(B). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, does not constitute an "agency" for the purposes of FOIA. See, e.g., Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel's Office exempt from FOIA). Although the documents requested were forwarded to the Park Service, they remain White House documents not subject to the provisions of the FOIA. See, e.g., Golan v. CIA, 607 F.2d 339, 347 (D.C. Cir. 1978), vacated in part on other grounds, 607 F.2d 367 (D.C. Cir. 1979), cert. denied, 445 U.S. 927 (1980) (Congress' retention of control over documents turned over to agency).

Second, the requested documents do not qualify as "agency records" since they were primarily personal documents prepared for the convenience of an employee and were not distributed. See, e.g., Bureau of National Affairs v. U.S. Dep't of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984) (personal diary, appointment calendars, phone logs not "agency records.")

Third, even assuming arguendo that these White House documents are "agency records", they are exempt from disclosure both under FOIA's exemption 6 (the privacy exemption) and exemption 7(c) (the privacy exemption in the context of a law enforcement

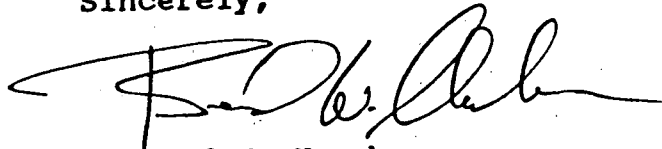
CLINTON LIBRARY PHOTOCOPY

investigation). See 5 U.S.C. § 552(b)(6) & (b)(7)(c). Disclosure of these documents would violate the privacy rights of a former White House employee and his family, and would not serve any significant public interest. As the D.C. Circuit has cautioned, "[T]he legitimate and substantial privacy interests of individuals . . . cannot be overridden by general public curiosity." Fund for Constitutional Government v. National Archives and Records Service, 656 F.2d 856, 866 (D.C. Cir. 1981).

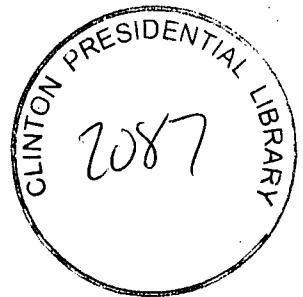
The privacy provisions of FOIA exemptions 6 and 7(c) apply fully to Mr. Foster's handwritten note. As has been publicly stated, the Foster family has requested that the handwritten version of the note not be released. That the note is handwritten only confirms the significant privacy interest in that note. Moreover, any public interest in release of the handwritten note is minimized because the complete contents of the note have been previously released and widely reported. See, e.g., New York Times Co. v. NASA, 920 F.2d 1002, 1004 (D.C. Cir. 1990) (en banc) (finding, under exemption 6, personal information in tape recording of astronauts' last conversation where transcript already published).

As you have requested, enclosed please find the copies of the documents you provided for our consideration. We appreciate your cooperation with this matter.

Sincerely,



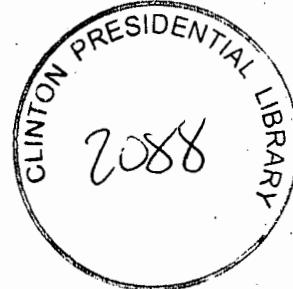
Bernard W. Nussbaum
Counsel to the President



THE WHITE HOUSE
WASHINGTON

January 21, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242



Marvin -
One g & one
type. Have you
5 Steve agreed?
-Clive

Re: FOIA Referral for Excerpts of Documents #36, 50, 52 and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the above-referenced request, under the Freedom of Information Act, for documents previously forwarded to the National Park Service by the White House Counsel's Office. We have reviewed these documents, and, for the reasons stated below, have concluded that such documents should not be disclosed.

First, the bracketed materials contained in documents #50 and 52 do not qualify as "agency records" for the reasons cited in my November 8, 1993 letter discussing the contents of Mr. Foster's phone log. The relevant materials in documents #50 and 52 reveal the contents of a White House employee's personal document shown by the White House to the Park Service. The phone log and its contents remain under the control of the White House and therefore are not "agency records" under the FOIA. See 5 U.S.C. § 552(a)(4)(B). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, does not constitute an "agency" for the purposes of FOIA. See, e.g., Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel's Office exempt from FOIA). Additionally, since the underlying document, the phone log, contains personal information, was prepared for the convenience of the employee, and was not distributed, its contents are not subject to the FOIA. See, e.g., Bureau of National Affairs v. U.S. Dep't of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984) (personal diary, appointment calendars, phone logs not "agency records.")

Second, the bracketed information in document #36 and the underlying log, document #87, catalogue the visitors to Mr. Foster's office, a White House office, and accordingly should not

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be considered "agency records" subject to the FOIA. Thus, the relevant portions of documents #36 and 87, prepared for the convenience of the Counsel's Office, remain White House documents not subject to the provisions of the FOIA.

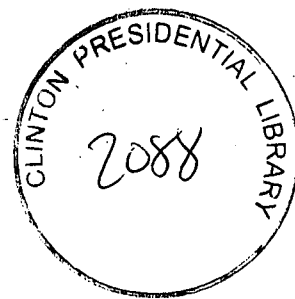
IS
this
fair
re.
SS
log?

Third, even assuming arguendo that the materials contained in documents #36, 50, 52 and 87 are "agency records", they are exempt from disclosure both under FOIA's exemption 6 (the privacy exemption) and exemption 7(c) (the privacy exemption in the context of a law enforcement investigation). See 5 U.S.C. § 552(b)(6) & (b)(7)(c). Disclosure of these documents would violate the privacy rights of a former White House employee and his family, and would not serve any significant public interest since they do not provide substantive information concerning the conduct of government business.

As you have requested, enclosed please find the copies of the documents you provided for our consideration. We appreciate your cooperation in this matter.

Sincerely,

Bernard W. Nussbaum
Counsel to the President

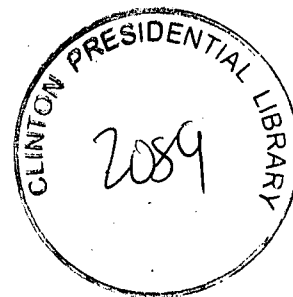


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DRAFT

THE WHITE HOUSE
WASHINGTON

January 31, 1994



Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52, and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the status of the above-referenced documents, under the Freedom of Information Act. We have reviewed these documents and have concluded that we have no objection to the discretionary disclosure of those documents.

Additionally, with regard to your previous letter of September 3, 1993, although we previously set forth the legal bases for denying these requests under the Freedom of Information Act, we have concluded that we have no objection to the discretionary disclosure of copies of Mr. Foster's phone log and his personal calendar.

In taking this position with regard to these documents, we express no opinion on whether FOIA exemption 7(a), concerning ongoing law enforcement proceedings, should apply in this context.

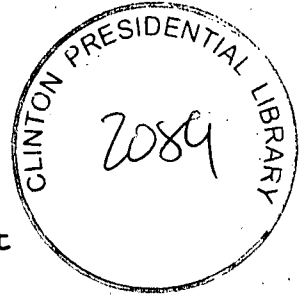
[For the reasons stated in my letter of November 8, 1993, we do object to the disclosure of Mr. Foster's actual handwritten note on privacy grounds. As set forth in that letter, we believe that disclosure of that handwritten note is properly denied because it is a personal document of a White House employee, and because its disclosure would compromise Mr. Foster's family's privacy interests without serving any significant public interest. The complete contents of the note have been previously released and widely reported. As has been publicly stated, moreover, the Foster family has requested that the handwritten version of the note not be released.]

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As you have requested, enclosed please find the copies of the documents you recently provided for our consideration. We appreciate your cooperation in this matter.

Sincerely,

Bernard W. Nussbaum
Counsel to the President



THE WHITE HOUSE

WASHINGTON



January 24, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52 and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the above-referenced request, under the Freedom of Information Act, for documents previously forwarded to the National Park Service by the White House Counsel's Office. We have reviewed these documents, and, for the reasons stated below, have concluded that such documents should not be disclosed.

First, the bracketed materials contained in documents #50 and 52 do not qualify as "agency records" for the reasons cited in my November 8, 1993 letter discussing the contents of Mr. Foster's phone log. The relevant materials in documents #50 and 52 reveal the contents of a White House employee's personal document shown by the White House to the Park Service. The phone log and its contents remain under the control of the White House and therefore are not "agency records" under the FOIA. See 5 U.S.C. § 552(a)(4)(B). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, does not constitute an "agency" for the purposes of FOIA. See, e.g., Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel's Office exempt from FOIA). Additionally, since the underlying document, the phone log, contains personal information, was prepared for the convenience of the employee, and was not distributed, its contents are not subject to the FOIA. See, e.g., Bureau of National Affairs v. U.S. Dep't of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984) (personal diary, appointment calendars, phone logs not "agency records.")

Second, the bracketed information in document #36 and the underlying log, document #87, catalogue the visitors to Mr. Foster's office, a White House office, and accordingly should not

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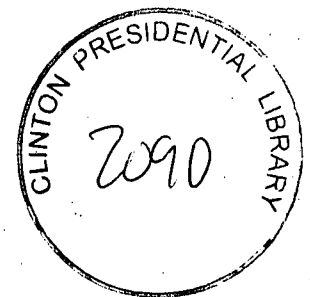
be considered "agency records" subject to the FOIA. Thus, the relevant portions of documents #36 and 87, prepared for the convenience of the Counsel's Office, remain White House documents not subject to the provisions of the FOIA.

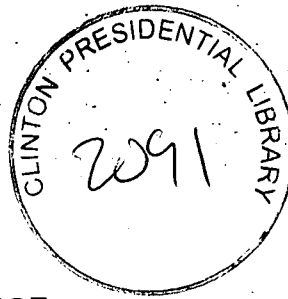
Third, even assuming arguendo that the materials contained in documents #36, 50, 52 and 87 are "agency records", they are exempt from disclosure both under FOIA's exemption 6 (the privacy exemption) and exemption 7(c) (the privacy exemption in the context of a law enforcement investigation). See 5 U.S.C. § 552(b)(6) & (b)(7)(c). Disclosure of these documents would violate the privacy rights of a former White House employee and his family, and would not serve any significant public interest.

As you have requested, enclosed please find the copies of the documents you provided for our consideration. We appreciate your cooperation in this matter.

Sincerely,

Bernard W. Nussbaum
Counsel to the President





IMP

THE WHITE HOUSE
WASHINGTON

Steve - I've talked with Cliff
already. He is ambivalent on
whether we shd oppose
disclosure of SS log.

Pls. advise.

Mam

Cliff - Do you
want to keep
these earlier
drafts of
FOIA response?
Mam

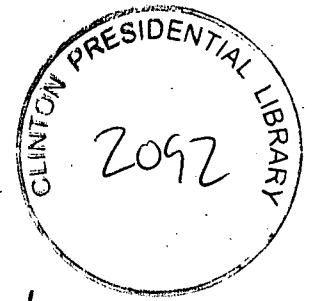
P.S. DOS has
agreed to do
everything we ask
in discovery - ^{Chinore}
I've asked it out
and

Steve -

I've reviewed.
bring up to go
on this FOIA
- Cliff

Steve -
I've reviewed.
let me know when
you want to discuss
- Cliff

DRAFT



January 11, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Service
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents
Related to Request of William Neumar

Dear Major Hines:

You have asked for our opinion regarding
documents, under the Freedom of
Information Act, and have
asked us to have no objection

Sorry for the delay!

Although we have previously
set forth the legal bases for
denying these requests under the
FOIA,
grounds. As set
forth in that

letter, we believe
that disclosure of that handwritten
note is properly denied because
[white house, excepted b(6).]

Bernard W. Neilsen
Counsel to the President

Cliff-

As requested.

Some arguments are
stronger than others, but
put them all in...

Pls advise.

Mann

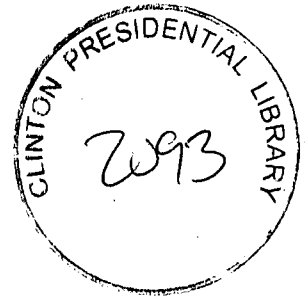
Mann -

See me

copies of the
operation. We

8
November
8, 1993,

THE WHITE HOUSE
WASHINGTON



January 11, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52, and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the status of the above-referenced documents, under the Freedom of Information Act. We have reviewed these documents, and have concluded that the Office of Counsel to the President has no objection to the discretionary disclosure of those documents.

However, with regard to your previous letter
Additionally, ~~in reference to my letter dated November 8, 1993,~~ *B-*
the Office of Counsel to the President has concluded that we have no objection to the discretionary disclosure, under the Freedom of Information Act, of copies of Mr. Foster's phone log and his personal calendar. *For the reasons stated in my earlier letter,* we do object to the disclosure of Mr. Foster's actual handwritten note ~~for the privacy concerns.~~

m As you have requested, enclosed please find the copies of the documents you recently provided for our consideration. We appreciate your cooperation with this matter.

Sincerely,

in

B
November
8, 1993,

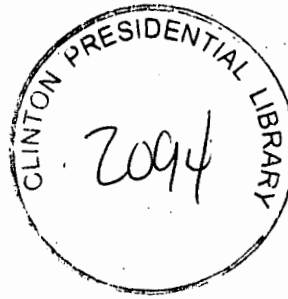
Bernard W. Nussbaum
Counsel to the President

grounds. As set forth in that letter, we believe that disclosure of that handwritten note is properly denied because [White House, section 5(6).]

CLINTON LIBRARY PHOTOCOPY

DRAFT

DRAFT



January 4, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52, and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the status of the above-referenced documents, under the Freedom of Information Act. We have reviewed these documents, and, for the reasons stated below, have concluded that such documents should not be disclosed.

First, the bracketed information in document #36 and the underlying log, document #87, catalogue the visitors to Mr. Foster's office, a White House office, and accordingly should not be considered an "agency record" subject to the FOIA. See 5 U.S.C. § 552(a)(4)(B). The Office of the President, including the President's immediate personal staff and units in the Executive Office whose sole function is to advise and assist the President, does not constitute an "agency" for the purposes of FOIA. See, e.g., Kissinger v. Reporters Committee, 445 U.S. 136, 156 (1980); National Security Archive v. Archivist of the United States, 909 F.2d 541, 545 (D.C. Cir. 1990) (Counsel's Office exempt from FOIA). Thus, documents #36 and 87, prepared for the convenience of the Counsel's Office, remain White House documents not subject to the provisions of the FOIA.

Do
we
about
log?

Second, as to the bracketed information contained in documents #50 and 52, these materials do not qualify as "agency records" for the reasons cited in my November 8, 1993 letter discussing the status of Mr. Foster's phone log. Documents #50 and 52 reveal the contents of an employee's personal document provided by the White House to the Park Service. The phone log and its contents remain under the control of the White House and therefore is not an agency record. Additionally, since the underlying document, the phone log, contains personal information, its contents are not subject to the FOIA. See, e.g., Bureau of National Affairs v. U.S. Dep't of Justice, 742 F.2d 1484, 1485-96 (D.C. Cir. 1984) (phone log not "agency records.")

only
bracket

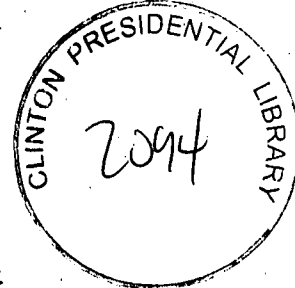
Third, even assuming arguendo that documents #36, 50, 52, and 87 are "agency records", they are exempt from disclosure both under FOIA's exemption 6 (the privacy exemption) and exemption 7(c) (the privacy exemption in the context of a law enforcement investigation). See 5 U.S.C. § 552(b)(6) & (b)(7)(c). Disclosure of the documents would violate the privacy rights of a former White House employee and his family, and would not serve any significant public interest.

The family has a significant privacy interest in Mr. Foster's telephone log (as discussed in documents #50 and #52), since it reveals highly personal information about calls placed or received shortly before his death. There is no significant public interest in discovering the log's contents, since the names and notations provide no substantive information related to government business. As to the log of persons entering Mr. Foster's office (the bracketed information in document #36 and document #87), the family has a significant privacy interest in those procedures followed in safeguarding his office. The public interest in these materials is minimal, since the log of persons entering Mr. Foster's office does not illuminate any government business.

As you have requested, enclosed please find the copies of the documents you provided for our consideration. We appreciate your cooperation with this matter.

Sincerely,

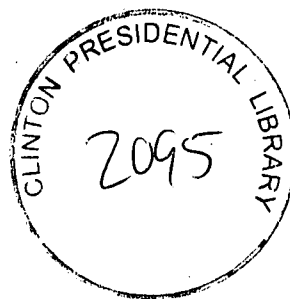
Bernard W. Nussbaum
Counsel to the President



CLINTON LIBRARY PHOTOCOPY

Documents

- ① Phone log sheet
- ② 7/20 calendar
- ③ 7/20 calendar
- ④ handwritten note
- ⑤ send source log
- ⑥ ref. to SSIS
- ⑦ ref. to Durb - 7/19/93 -



WH logs

• review WH docs

• greatest downside - app. storage; or set back pencils

• early's point: the more you hold back the better -

: drafting - possible to stop a news story -

Don't want any type of further
news story

Legally

→ WH docs not subject to FOIA

→ if pers. records - fail down to and just stuff related -

→ investigative record - any exception should be used -

- Master fail op -

→ releasing WH docs - if you release this → why not this?

→ protect w/ piecemeal response -

CLINTON LIBRARY PHOTOCOPY

SH

- right to assert own records

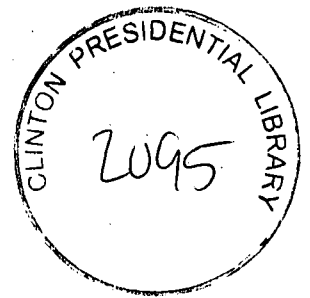
- SH not contacted

- will be royally pissed

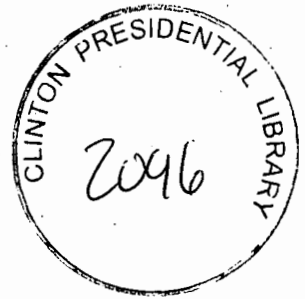
- assured by DOS

• report ready for months - DOS looked at it & sent it over to Park Police -

• nobody has sent to Jim - with his disapproval -



CLINTON LIBRARY PHOTOCOPY



January 31, 1994

Major Robert H. Hines
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52, and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the status of the above-referenced documents, under the Freedom of Information Act. We have reviewed these documents and have concluded that we will not on behalf of the White House assert any privileges or other legal objections to disclosure that may apply to those documents.

Additionally, with regard to your previous letter of September 3, 1993, although we previously set forth the legal bases for denying these requests under the Freedom of Information Act, we have concluded that we also will not assert on behalf of the White House any privileges or other legal objections to the disclosure of copies of Mr. Foster's phone log and his personal calendar.

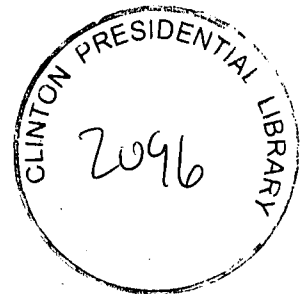
For the reasons stated in my letter of November 8, 1993, we do object to the disclosure of Mr. Foster's actual handwritten note on privacy grounds. As set forth in that letter, we believe that disclosure of that handwritten note is properly denied because it is a personal document of a White House employee, and because its disclosure would compromise Mr. Foster's family's privacy interests without serving any significant public interest. The complete contents of the note have been previously released and widely reported. As has been publicly stated, moreover, the Foster family has requested that the handwritten version of the note not be released.

CLINTON LIBRARY PHOTOCOPY

As you have requested, enclosed please find the copies of the documents you recently provided for our consideration. We appreciate your cooperation in this matter.

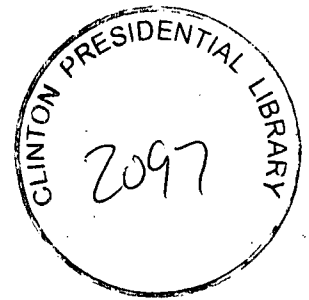
Sincerely,

Bernard W. Nussbaum
Counsel to the President



~~DRAFT~~

THE WHITE HOUSE
WASHINGTON



January 24, 1994

Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52 and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the above-referenced request, under the Freedom of Information Act, for documents previously forwarded to the National Park Service by the White House Counsel's Office.

We understand from media reports that these documents may be relevant to pending law enforcement proceedings. Since exemption 7(A) of the FOIA would preclude disclosure of those documents that pertain to ongoing law enforcement proceedings, we believe it is inappropriate at the present time for the White House to consent to disclosure of these documents.

As you have requested, enclosed please find the copies of the documents you provided for our consideration. We appreciate your cooperation in this matter.

Sincerely,

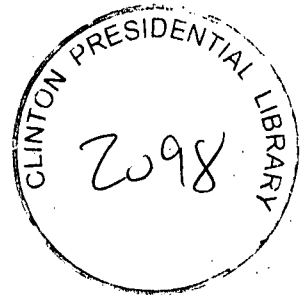
Bernard W. Nussbaum
Counsel to the President

CLINTON LIBRARY PHOTOCOPY

THE WHITE HOUSE

WASHINGTON

January 19, 1994



Robert H. Hines, Major
Commander, Office of Inspectional Services
United States Department of the Interior
National Park Service
Headquarters, United States Park Police
1100 Ohio Drive, S.W.
Washington, D.C. 20242

Re: FOIA Referral for Excerpts of Documents #36, 50, 52, and 87
Related to Request of William Neumann Dated August 11, 1993

Dear Major Hines:

You have asked for our opinion regarding the status of the above-referenced documents, under the Freedom of Information Act. We have reviewed these documents and have concluded that we have no objection to the discretionary disclosure of those documents.

Additionally, with regard to your previous letter of September 3, 1993, although we previously set forth the legal bases for denying these requests under the Freedom of Information Act, we have concluded that we have no objection to the discretionary disclosure of copies of Mr. Foster's phone log and his personal calendar.

For the reasons stated in my letter of November 8, 1993, we do object to the disclosure of Mr. Foster's actual handwritten note on privacy grounds. As set forth in that letter, we believe that disclosure of that handwritten note is properly denied because it is a personal document of a White House employee, and because its disclosure would compromise Mr. Foster's family's privacy interests without serving any significant public interest. The complete contents of the note have been previously released and widely reported. As has been publicly stated, moreover, the Foster family has requested that the handwritten version of the note not be released.

As you have requested, enclosed please find the copies of the documents you recently provided for our consideration. We appreciate your cooperation in this matter.

Sincerely,

Bernard W. Nussbaum
Counsel to the President

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	To Bruce Lindsey from Allen Snyder re: phone logs (1 page)	05/10/1995	P5 2099
002a. list	Phone No. (Partial) (3 pages)	08/22/1993	P6/b(6)
002b. list	Personal (Partial) (1 page)	05/01/1995	P6/b(6)
002c. list	Phone No. (Partial) (1 page)	07/20/1993	P6/b(6)
002d. list	Phone No. (Partial) (4 pages)	07/20/1993	P6/b(6)
002e. list	Phone No. (Partial) (1 page)	07/21/1993	P6/b(6)
002f. list	Phone No. (Partial) (3 pages)	07/21/1993	P6/b(6)
002g. list	Phone No. (Partial) (2 pages)	07/21/1993	P6/b(6)
002h. list	Phone No. (Partial) (1 page)	07/23/1993	P6/b(6)
002i. list	Phone No. (Partial) (1 page)	07/26/1993	P6/b(6)
002j. list	Phone No. (Partial) Personal (Partial) (4 pages)	07/26/1993	P6/b(6), b(7)(C)
002k. list	Phone No. (Partial) Personal (Partial) (4 pages)	07/26/1993	P6/b(6), b(7)(C)
002l. list	Phone No. (Partial) Personal (Partial) (4 pages)	07/26/1993	P6/b(6), b(7)(C)

COLLECTION:

Clinton Presidential Records
Counsel's Office
Bruce Lindsey
OA/Box Number: 24785

FOLDER TITLE:

Vince Foster Documents: Produced Documents to the Independent Counsel re Vince Foster

Bevin Maloney
2006-1080-F
bm561

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

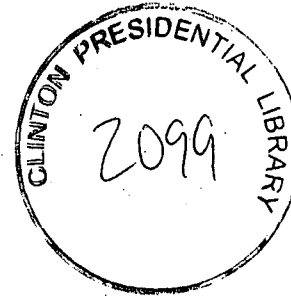
CLINTON LIBRARY PHOTOCOPY

File Foster

HOGAN & HARTSON

L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600



BRUSSELS
LONDON
PARIS
PRAGUE
WARSAW
BALTIMORE, MD
BETHESDA, MD
McLEAN, VA

ALLEN R. SNYDER
PARTNER
DIRECT DIAL (202) 637-5741

May 10, 1995

~~PRIVILEGED AND CONFIDENTIAL~~

BY HAND DELIVERY

Bruce R. Lindsey
Assistant and Deputy Counsel to the President
White House
Washington, DC, 20500

Dear Bruce:

I have spoken several times on the telephone over the last few days with Miriam Nemetz regarding the issue of production of your telephone logs for the July 20-27 time frame, with reference to the subpoena for White House documents supposedly relating to the Vince Foster documents inquiry. I have been urging Nemetz that the White House redact all of the substantial "message" portion of the phone logs with regard to those phone messages which apparently have no relevance whatever to the Vince Foster inquiry. While I have not reviewed your phone logs in detail, it is my understanding that is the case with regard to all of your entries.

Nemetz yesterday indicated that the Counsel's office has decided to follow that approach, in which case I assume there is no problem with your giving them all of your phone logs, with the understanding that they will be so redacted. Please let me know if you see any other issues. Otherwise, why don't you just go ahead and provide the materials directly to Nemetz.

Best regards,

Allen R. Snyder

lah
Enclosures

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: BKM DATE: 05/01/92
2000-1080-F

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. note	Handwritten note from POTUS to FLOTUS (1 page)	06/14/1994	P5 2079
-----------	--	------------	---------

COLLECTION:

Clinton Presidential Records
WHORM Subject File-General
JL
OA/Box Number:

FOLDER TITLE:

067641

2006-1080-F
ds393

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

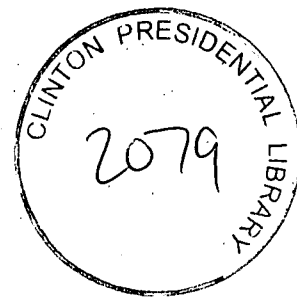
C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



6/14
THE PRESIDENT HAS SEEN

16702g
What did we see
decide to do on this?
Rg

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Janet M Philips to Ellen W McCathran at 16:32:00.00. Subject: bone weary [partial] (1 page)	08/16/1993	P6/b(6)
002. email	Stephen Silverman to Laurie Labuda re: reports (1 page)	02/18/1994	P5
003. email	Keith Boykin to Lisa Cain re: FYI [partial] (1 page)	06/13/1994	P5
004. email	Julia Moffat to David Dreyer re: op-ed outline (1 page)	06/17/1994	P5
005. email	David Dreyer to Shelia Cheston et al. re: Draft communications plan (5 pages)	06/25/1994	P5

COLLECTION:

Clinton Presidential Records
Automated Records Management System [Email]
WHO ([Vince, Vincent, Foster, Death, Suicide])
OA/Box Number: 500000

FOLDER TITLE:

[07/28/1993 - 06/25/1994]

2006-1080-F

ms80

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

RECORD TYPE: PRESIDENTIAL (RECONSTRUCTED EMAIL)

CREATOR: Stephen B. Silverman (SILVERMAN_S) (WHO)

CREATION DATE/TIME: 18-FEB-1994 13:55:00.00

SUBJECT: Reports

TO: Laurie L. Labuda (LABUDA_L) (WHO)
READ: UNKNOWN

TEXT:

PRINTER FONT 10_POINT_COURIER
DEPARTMENT OF THE TREASURY

o RTC's Handling of Madison Guaranty: Secretary Bensten will appear before the Senate Banking Committee with other members of RTC's Oversight Board (Roger Altman, Skip Hove, Alan Greenspan) for the required annual Congressional hearings. Republican members have noted that the annual hearing did not occur last year. There is concern that the Republicans will use the hearing as a form to publicize allegations on Whitewater and Madison Guaranty.

o G-

□ 7 Finance Ministers' Meeting in Frankfurt: The Secretary will join the G-7 finance ministers in Frankfurt February 25-27. Russian reform and world economic growth will be on the agenda.

o Republican Inquiry into Foster Suicide: Rep. William Clinger has requested copies of all documents on file at Treasury regarding Vince Foster's death be turned over by noon, Monday, February 21. ATF's ballistics tests on the gun used are believed to be his primary goal. Ron Noble has discussed the release with Independent Counsel Robert Fiske. Treasury will comply with Fiske's decision regarding whether releasing the material to Clinger would hamper the investigation.

o Possible News: 1) In an interview with Newsweek, Customs Office of Enforcement has strongly refuted a suggestion that U.S. Customs Officers involved on the Macedonian border might be aware that the U.S. Government is supplying U.S. war material to Bosnia and have been asked to look the other way. However, Waller may report next week that Danish Customs officers in a different region are allowing war materials to go to the Bosnian Government. 2) Several major news organizations have recently inquired with the Customs service about allegations of Japanese goods imported by Sega Electronics produced by forced labor. A former Japanese prisoner, now a U.S. Citizen, has made the allegation. Sega volunteered late last year that one of its subcontractors had utilized prison workers but had ceased the practice.

DEPARTMENT OF COMMERCE

o Export Administration Act: You will make final sign-off regarding new Export Administration Act provisions this week. On Thursday, February 24, Commerce expects to formally roll-out the Administration's proposal at a hearing before Congress and in a press conference.

o Economic Development Administration Grants: The EDA will announce nine grant awards next week, totalling more than \$15 million. The communities that will receive grants are: Hermann, Missouri; Valley Forge, Pennsylvania; Vieques, Puerto Rico; Kellogg, Idaho; Commonwealth of Pennsylvania; Providence County, Rhode Island; Jackson County, Mississippi; Rantoul, Illinois; and Lake Placid, New York.

RECORD TYPE: PRESIDENTIAL (RECONSTRUCTED EMAIL)

CREATOR: Keith O. Boykin (BOYKIN_K) (WHO)

CREATION DATE/TIME: 13-JUN-1994 11:35:00.00

SUBJECT: FYI

TO: Lisa V. Cain (CAIN_L) (WHO)
READ: UNKNOWN

TEXT:
This message is for your information. Please do not discuss this
with reporters though. Thanks.

===== ATTACHMENT 1 =====
ATT CREATOR: David Leavy (LEAVY_D)

ATT CREATION DATE/TIME: 13-JUN-1994 11:25:00.00

ATT BODY PART TYPE: B

ATT SUBJECT: Stm. by Special Counsel Cutler

ATT TO: Ruano, Araceli (ARACELI RUANO@EOP_OVP@CCGATE@EOPMRX)
READ: UNKNOWN

ATT TO: Mike Lux (LUX_M)
READ: UNKNOWN

ATT TO: Doris Matsui (MATSUI_D)
READ: UNKNOWN

ATT TO: Amy Zisook (ZISOOK_A)
READ: UNKNOWN

ATT TO: Mary H. Anton (ANTON_M)
READ: UNKNOWN

ATT TO: Cynthia J. Lizik (LIZIK_C)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\EDOWD(A)ESUSDA.GOV@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: FAX (98987565,CNN) (TLX1MAIL_\F:98987565\C:CNN\\)
READ: UNKNOWN

ATT TO: FAX (98877686,ABC) (TLX1MAIL_\F:98877686\C:ABC\\)
READ: UNKNOWN

ATT TO: FAX (93345451,WASHINGTON POST) (TLX1MAIL_\F:93345451\C:WASHINGTON POST\\)
READ: UNKNOWN

ATT TO: FAX (93311765,CBS) (TLX1MAIL_\F:93311765\C:CBS\\)
READ: UNKNOWN

ATT TO: FAX (94566210,PRESS OFFICE) (TLX1MAIL_\F:94566210\C:PRESS OFFICE\\)
READ: UNKNOWN

ATT TO: FAX (98988057,UPI) (TLX1MAIL_\F:98988057\C:UPI\\)
READ: UNKNOWN

ATT TO: FAX (98871050,LA TIMES) (TLX1MAIL_\F:98871050\C:LA TIMES\\)
READ: UNKNOWN

ATT TO: FAX (98620340,NY TIMES) (TLX1MAIL_\F:98620340\C:NY TIMES\\)
READ: UNKNOWN

ATT TO: FAX (98953133,FOX) (TLX1MAIL_\F:98953133\C:FOX\\)
READ: UNKNOWN

ATT TO: FAX (98286422,AP) (TLX1MAIL_\F:98286422\C:AP\\)
READ: UNKNOWN

ATT TO: FAX (93622009,NBC) (TLX1MAIL_\F:93622009\C:NBC\\)
READ: UNKNOWN

ATT TO: FAX (98988383,REUTERS) (TLX1MAIL_\F:98988383\C:REUTERS\\)
READ: UNKNOWN

ATT TO: FAX (917035583935,USA TODAY) (TLX1MAIL_\F:917035583935\C:USA TODAY\\)
READ: UNKNOWN

ATT TO: FAX (98629266,WALL ST. JOURNAL) (TLX1MAIL_\F:98629266\C:WALL ST. JOURNAL\\)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\SSCHLESI(A)MHL.JS.MIL@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\JFREITAS(A)PAGATE.PA.OSD.MIL@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Lori E. Abrams (ABRAMS_L)
READ: UNKNOWN

ATT TO: Elizabeth C. Bowyer (BOWYER_E)
READ: UNKNOWN

ATT TO: Jeremy Gaines (GAINES_J)
READ: UNKNOWN

ATT TO: Chad H. Griffin (GRIFFIN_C)
READ: UNKNOWN

ATT TO: Arthur L. Jones (JONES_A)
READ: UNKNOWN

ATT TO: Kathy McKiernan (MCKIERNAN_K)
READ: UNKNOWN

ATT TO: Dee Dee Myers (MYERS_D)
READ: UNKNOWN

ATT TO: A. Victoria Rivas-Vazquez (RIVASVZQU_A)
READ: UNKNOWN

ATT TO: Lorraine A. Voles (VOLES_L)
READ: UNKNOWN

ATT TO: Nancy L. Ward (WARD_N)
READ: UNKNOWN

ATT TO: Natalie S. Wozniak (WOZNIAK_N)
READ: UNKNOWN

ATT TO: Virginia M. Terzano (TERZANO_V)
READ: UNKNOWN

ATT TO: Felton T. Newell (NEWELL_F)
READ: UNKNOWN

ATT TO: Erin A. O'Connor (OCONNOR_E)
READ: UNKNOWN

ATT TO: APRIL K. MELLODY (MELLODY_A)
READ: UNKNOWN

ATT TO: Laura D. Schwartz (SCHWARTZ_L)
READ: UNKNOWN

ATT TO: Rica F. Rodman (RODMAN_R)
READ: UNKNOWN

ATT TO: Richard L. Siewert (SIEWERT_R)
READ: UNKNOWN

ATT TO: Anne M. Edwards (EDWARDS_A)
READ: UNKNOWN

ATT TO: Marcia Hale (HALE_M)
READ: UNKNOWN

ATT TO: Lee A. Satterfield (SATTERFIEL_L)
READ: UNKNOWN

ATT TO: Patti Solis (SOLIS_P)
READ: UNKNOWN

ATT TO: Stephanie Streett (STREETT_S)
READ: UNKNOWN

ATT TO: Isabelle R. Tapia (TAPIA_I)
READ: UNKNOWN

ATT TO: Anne Walley (WALLEY_A)
READ: UNKNOWN

ATT TO: Remote Addressee (BULLETIN@1=US@2=TELEMAIL@3=HOUSE@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Remote Addressee (MATT GELMAN@1=US@2=TELEMAIL@3=HOUSE@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\WH-OUTBOX-DISTR(A)LEX-LUTHOR.AI.MIT.EDU@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\BACKUP(A)REAGAN.AI.MIT.EDU@MRX@EOPMRX)
READ: UNKNOWN

ATT TO: Remote Addressee (1=US@2=TELEMAIL@3=INTERNET@*RFC-822\USIA01(A)ACCESS.DIGEX.COM@MRX@EOPMRX)
READ: UNKNOWN

ATT TEXT:

PRINTER FONT 12_POINT_COURIER
THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

June 13, 1994

Statement by Lloyd Cutler, Special Counsel to the President

Independent Counsel Robert Fiske, who is in the process of concluding the Washington phase of his inquiries, conducted interviews yesterday afternoon at the White House with President and Mrs. Clinton.

As the President has previously announced, he and Mrs. Clinton are cooperating fully with the Independent Counsel and voluntarily agreed when the interviews were requested. The interviews were conducted under oath. The subject matters were the events surrounding the death of Vincent Foster and the communications between the Treasury and White House staffs concerning the Resolution Trust Company and Madison Guaranty Savings and Loan. At the request of the Independent Counsel, no further statement about the content of the interviews will be made at this time.

#

----- END ATTACHMENT 1 -----

RECORD TYPE: PRESIDENTIAL (RECONSTRUCTED EMAIL)

CREATOR: Julia Moffett (MOFFETT_J) (WHO)

CREATION DATE/TIME: 17-JUN-1994 15:09:00.00

SUBJECT: op-ed outline

TO: David Dreyer (DREYER_D) (WHO)

READ: UNKNOWN

TEXT:

PRINTER FONT 12_POINT_ROMAN

TO: BILL STYRON

FR: DAVID DREYER

JULIA MOFFETT

Below is an outline which attempts to organize and expand on our discussion for the possible op-ed. As we discussed, we feel that the one-year anniversary of Vince Foster's suicide on July 20th in conjunction with the beginning of Congressional Whitewater hearings presents an appropriate opportunity to rebut conspiracy theories over his suicide, and to directly address the political motivations of those who continue to exploit the issue.

PRINTER FONT 12_POINT_ROMAN_ITALIC

Next week the Congress begins holding hearings to investigate matters involving the Whitewater Development Corporation....Of the three issues to be addressed, two are products of the politicization of the saddest event a family can endure--when someone who is central to their lives is overcome by sadness and commits suicide....Suicide is an act still greatly misunderstood and underappreciated--more people commit suicide than are victims of homicide...This misunderstanding leads to a sense of mystery which haunts the pain of the survivors....

A public health problem of this magnitude is only made worse when politicians, for their own perverse and political ends, exacerbate pain for politics...

Put yourself in the shoes of Lisa Foster and her children who have to face the exploitation of this family tragedy on supermarket tabloid shelves as a result of people operating for their own political ends....

There was a time during the Senate hearings involving Joe McCarthy when _____ attacked a young lawyer so viciously that people finally stood up and said 'Enough is enough'. An attorney named Welsh faced Senator McCarthy and proclaimed, 'Sir, you have no decency.'.....

We have now reached that point in the Whitewater investigation in which people are using this tragic incident to conceal their true intentions of trying to reverse the results of the 1992 election....One year later, what do we know now that we didn't then? We know that the right-wing conspiracy theories were actually storm and fury signifying nothing---There was no murder. There was no conspiracy...There was no moving of the body...There was no white van....
Enough is enough....

As we approach the one-year mark since Vince Foster's suicide--a year of politics of the most vicious sort in which zealots working for their own ends with total disregard for decency--his family, as well as the President and First Lady of the United States, deserve the right to grieve in private.

RECORD TYPE: PRESIDENTIAL (RECONSTRUCTED EMAIL)

CREATOR: David Dreyer (DREYER_D) (WHO)

CREATION DATE/TIME: 25-JUN-1994 13:26:00.00

SUBJECT: DRAFT-DRAFT-DRAFT-COMMUNICATIONS PLAN

TO: Shelia C. Cheston (CHESTON_S) (WHO)
READ: UNKNOWN

TO: Jane C. Sherburne (SHERBURNE_J) (WHO)
READ: UNKNOWN

TO: Douglas B. Sosnik (SOSNIK_D) (WHO)
READ: UNKNOWN

TO: W. Neil Eggleston (EGGLESTON_W) (WHO)
READ: UNKNOWN

TO: Todd Stern (STERN_T) (WHO)
READ: UNKNOWN

TEXT:

PRINTER FONT 12_POINT_COURIER

TOP ALL

DRAFT

HORIZONTAL_PITCH 17

PRINTER FONT 7_POINT_COURIER

Memorandum

HORIZONTAL_PITCH 10

PRINTER FONT 12_POINT_COURIER

To: Lloyd Cutler, Special Counsel to the President

Fr: David Dreyer

Re: Whitewater Communications

Da: June 25, 1994

Overview

This is going to be a bad story. The hearings are a forum for our opponents. We should anticipate bad network television set-up pieces, and expect print press stories that go beyond the narrow scope of the hearings timed as curtain raisers for the main event. If there is new information about our handling of the Whitewater, its release will create huge headlines, and reopen questions about our honesty in handling this matter.

Depending upon what happens with crime and health reform, these hearings could define the President's year as we approach the Fall elections. Even if we get a clean bill of health from Special Counsel Fiske, our self-inflicted injuries have not healed, and testimony in the Hearing Room won't make them sound much better. Neither your testimony nor Secretary Bentsen's will satisfy the hungry dogs. This is not about the law, the details, or neutral fact-finding, but about politics and destroying the President's character in the minds of the American people.

For us, the hearings are a character test, and we will be judged by our effectiveness in preparing, our candor in testifying, our consistency in responding to questions about these matters. Our witnesses should be cooperative, but also confident -- they did nothing wrong. As the hearings unfold, the President should be hard at work on things the public cares about. We must counterpose our opponents' efforts to exploit Whitewater with the President working on health care and crime.

From a communications standpoint, we have two objectives: Making a plausible, vigorous outside case about the political motives of our opponents, while we wage an effective effort to manage the stories inside the hearing room during each news cycle. Working with legal counsel, congressional and research, these two approaches will be followed during the weeks and events leading up to the hearings in the Senate and House:

- * Release of the Fiske Report, week of July 27
- * Congressional Recess
- * Pre-hearings run-up, weeks of July 11 and July 18
- * Hearings

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Republican Message:

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"The constellation of issues known as Whitewater -- the abuses of power, the conflicts of interest, the insider's access, the obstruction of justice -- are about more than criminal wrongdoing, as bad as that is. These issues speak to the larger flaws in the President's character which render him unfit for

office. He will stop at nothing to block exposure of these flaws. But our dedication to country and to the people's interests will prevail over his efforts to cling to power."

PRINTER FONT 12_POINT_COURIER_OBLIQUE

White House Message:

PRINTER FONT 12_POINT_COURIER

"The Fiske Report proved that the actions by White House aides surrounding Vince Foster's death and contacts with the Treasury were completely legal. But the controversy surrounding them, created by Administration opponents, never had anything to do with the law, but had everything to do with negative politics and obstructing the President's program. Whitewater is about character of the President's foes -- lacking a positive program of their own, they simply engage in attack politics. Meanwhile, the President is determined to fix the economy and health care, and attack crime -- to do the work the people elected him to do."

PRINTER FONT 12_POINT_COURIER_OBLIQUE

Allies and Supporters Message:

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"We didn't object to the Special Counsel. We don't object to the hearings. We do object to a witchhunt that takes reasonable actions done by dedicated staff that tries to turn these acts into a scandal -- which Mr. Fiske says did not happen. It is unspeakable that they will stop at nothing, including torment the family of Vince Foster, to advance their narrow political interests, to stop progress on health care, or to hurt the President and Mrs. Clinton.

"Hypocritical Republicans, displaying overweening, unconvincing concern for the management of S+Ls and for the ethics of business deals, are Johnny-come-lately's to questions of corporate mismanagement and misdeeds of the 1980s.

"For Republicans, Whitewater is a character issue. They lack a core. They are terribly divided -- panicked over the religious right. They cover up their emptiness and division with the one thing they can agree on -- attacking the President. Why do they oppose positive change? Because they have no positive program. They are just a combination of Oliver Stone and Oliver North -- conspiracy theories and right wing agendas."

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Fiske Report

The Week of June 27th

Objective(s). Depends upon what happens -- what Fiske reports and how he reports it. Minimally, we want to underscore that Fiske found no wrongdoing, and therefore we don't expect much to come from the hearings. We want to repudiate the people who politicized the death of Vince Foster. We can take the occasion to demonstrate the breadth of our cooperation, and remind people of quotes by leading Republicans who approved of Fiske's appointment. Finally, we should work to make the Fiske Report or findings as definitive as possible and deflate interest, if we can, in the coming hearings.

There will be a rush to interpret the Fiske report or findings upon their issuance. The opposition will use the report to repeat their allegations of 'whitewash,' discount the importance of the Washington phase of Fiske's inquiry, and direct people more aggressively toward the Arkansas issues.

Proposed actions:

- o Book Lloyd Cutler, and other White House spokespeople, for media interviews to react positively to Fiske's findings as exculpatory (as possible) and conclusive at this stage;
- o We should ask our friends in the legal community, such as Bob Bennett, to recruit other legal talking heads to do our message in reply to the Fiske Report, e.g. Sam Dash, Arthur Liman, Bob Bennett, Jill Wine Banks, Richard ben-Veniste, Susan Estrich, Laurie Levenson (Loyola Law School);
- o We should ask our friends to call aggressively their contacts in the press, e.g. Jody Powell, Paul Costello, Bob Beckel, Bob Squier, Ann Lewis, Leslie Dach, Tony Podesta, Bob Shrum, Mike Berman, and Frank Greer;
- o Redistribute to the press the corrective measures taken by the White House to guard against improper contacts, and restate how extensive was our cooperation with Fiske (e.g., number of documents provided, no privileges claimed, number of interviews);

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- o Provide to the press positive comments by Republicans about Fiske's appointment (see last page), e.g. --

D'Amato: "Bob Fiske is uniquely qualified for this position. He is a man of uncompromising integrity. He will unearth the truth for the American people." {Newsday,

1/21/94};

- o Recruit Members of Congress for one-minute speeches saying nothing happened, the Republican Special Prosecutor has given the White House a clean bill of health, this is political, let's go back to health care;

- o Place in the Washington Post and the New York Times op-ed pieces shaming Republicans for politicizing Vince Foster's death (Note. Dreyer has pieces by William Styron and Dr. Herbert Pardes of Columbia University underway. Neil will supplement with more politically-directed piece.)

Prehearings

Post July 4th

We must orchestrate reaction to July 4th recess. Members who can confirm our instinct that there is no public interest in Whitewater should do so with reporters.

The Week of July 11 and July 18th

Objectives:

- o If there is more information that is new, get it out the door before the hearings begin. We do not want new revelations at the hearings. The hearings must rehash old news. Will there be a pre-hearing report by Mr. Cutler?

- o We need to be on our guard for press stories that exceed the scope of the hearings timed to break at the beginning of the hearings. If I were the press, I would use the onset of the Congressional inquiry as a trigger for raising issues, new or old. Rapid response is crucial here.

- o Go on the offensive with regard to RTC contacts. During the campaign, Gore made a score with a speech on Iraq-gate; someone should give a speech regarding Whitewater, politics, and the shifting morality as regards Agency-White House contacts -- reminding people of the history on S+Ls, HUD, etc. We could use a scene-setter for this subject before the hearings focus on the RTC.

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- o We must brief reporters and begin setting a storyline out in the week before the hearings (before the Sunday show and news magazine deadlines of COB, July 22, 1994). This operation can be aided by the Anne Lewis group, especially with regard to distribution of the Whitewater Viewers guide.

- o We need to be out aggressively with the Members' profiles in their local print and broadcast outlets to try and buy some humility on their part.

- o Can we float some political analysis about the Republicans having as much to lose as the Democrats? We should be raising the heat on D'Amato, '96 Republican Presidential politics, and negative campaigning.

Hearings

"A basic tension exists in American politics between the activities of searching for the truth and trying to win elections. Our system was founded on the conviction that the former will be successful only if the latter is done fairly." James A. Leach, February 5, 1992.

Presentation. Quite apart from whatever evidence is released and testimony is taken, the hearings will capture a collective impression of the Administration for the public and, more important, press and Washington elites. We have an opportunity to tell a positive story about our approach toward the constellation of issues now called "Whitewater."

This is about the Administration's character. Preparation of witnesses and testimony should revolve around the idea of communicating candor, guts, a commitment to the public interest, a willingness to learn from our mistakes. Unlike the RTC Oversight hearing with the Treasury in February, there can and must be no surprises. Anything new should go out the door before then.

Hearing strategy. We need a bifurcated strategy for the hearings. We want to discourage coverage; and so, boring is better. We encourage detailed opening statements by every Democrat on both Banking panels. We want detailed statements by our opening witnesses. We advocate starting the hearings on Thursday, so that the weekend forces a premature media judgement on whether the hearings are worth watching. An early technical or procedural battle over, for example, scope would also suit our objectives.

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We should make the hearings expensive and inconvenient for the networks to cover; boring and inconclusive for the press to follow. The hearings should start late, never on time. We should encourage votes on both the House and Senate floors. The

Committees should adjourn to vote, never have a relay of committee members to keep the hearings going.

So, we bore if we can. Yet, coverage will occur, everyday. Twice-a-day, print and electronic media will be determining "what is the story?"

It is in our interest to dominate the news, and that will require a strong overall message and an even stronger tactical approach. Though their numbers may dwindle, reporters will be in those hearing rooms gavel-to-gavel. We need a two-cycle spin operation in the hearing rooms interpreting events for the reporters as they decide what is news.

Republican message. The game for Republicans is to use the material and witnesses before the Committee to move the game from the Fiske Washington investigation into Arkansas and Whitewater Development. Their intent is to further erode public confidence in the character of the Clintons and the Administration's capacity to govern the country. They will accuse the Administration of using every effort to block and conceal efforts to review Whitewater from the very beginning. That's why the Clinton's never wanted a Special Counsel. That's why the hearings are narrow in scope. That's why White House officials were in Vince Foster's office. That's why Administration officials tried to interfere with the RTC. They used government power to protect their personal privilege.

Democratic Message. The White House must look cooperative, not combative. Nothing will substitute for strong preparation of witnesses and cooperative Democratic Members with the facts. It is allied Members of Congress who must serve as our channel to confront the Republicans, and we must also use them to control the pace and tempo of the hearings. But I think we have to have strong message presentations in the following areas:

- o This isn't about the obstruction of justice, its about the obstruction of progress. There is nothing here, and there never was. The White House may have made mistakes in execution, but this is a personal, political attack against people trying to bring change to this country -- let's face it.

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[Some Democratic Member who speaks should flash a Health Security Card, raise his voice, and say the Republican Party is scared to death the people of this country will go to the polls with one of these cards in their pockets, and they will give the President credit for it. That's why they'll stop at nothing to bring this President down. They are just a combination of Oliver Stone and Oliver North -

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conspiracy theories and right wing agendas.

[Nothing could help this strategy more than having health care on the floor on this time!]

[Daily Banking Committee Speech on health care, e.g. "Mr. Chairman. X,000 people lost their health insurance today, and we are talking about this nonsense.]

- o For Republicans, Whitewater is a character issue. They lack a core. They don't know what they believe or think. They lack principles. They lack direction. They lack limits. They have no sense of propriety; no sense of right or wrong. They were willing to take a family tragedy, the suicide of White House Counsel Vince Foster, and exploit their grief for political ends.

- o Why do Republicans seek to reach beyond the scope of the hearings? The Republicans are bypassing the agreed upon scope of the hearings because there is nothing here and there never was. If they want to do Arkansas too; that's fine. We'll get there in due time.

[Recirculate list of discredited charges.]

- o Republicans are hypocrites on the issue of RTC contacts. Let's never forget Silverado, the 1992 referral, and all of the other instances when Republicans in control of the Executive Branch did precisely the same thing.

Outside the hearing room. Anything we can do to move the focus from the issues inside the hearing room will be worthwhile.

The President should be scheduled in ways that show him to be engaged in his serious work. He needs to be confident and self-assured in public appearances.

Members of Congress should be programmed to do one-minute speeches and addresses in morning business talking about the political choice made by the two parties between health care and Whitewater. DNC and White House press operations should circulate overnight Arbitron ratings for the daily hearings. "This is a bore, let's get back to the people's business."

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We will have a daily operation using a Committee Member, the political committees, or the White House (as appropriate) to get information back to the local districts on what their Members are up to. Eller has already done State/District Media profiles for each Banking Committee Member. Steve Hilton, Office of Public Liaison, is presently working on a supporter/eminent persons list for each Congressional district.

Our strategy at home should be to raise the cost of participation in the hearings among the Republicans on the Committees. The message we need delivered at home is obvious and clear:

- o Enough is enough. Get back to basics. Deal with health care, welfare and serious issues. Stop playing politics.

Unanswered questions.

- o Can we organize with Democrats on the two Committees a spin operation for the morning and afternoon sessions of the hearings? How will we coordinate message? What is our ready response capacity? We need a nightly or pre-

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hearing strategy meeting.

- o Will we aggressively sell our explanation of these incidents during the hearing? Do we plan props or exhibits for the hearing? Who are our witnesses?

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HORIZONTAL PITCH 13

PRINTER FONT 12 POINT ROMAN

 GOP on Special Counsel Robert Fiske

D'Amato: "Bob Fiske is uniquely qualified for this position. He is a man of uncompromising integrity. He will unearth the truth for the American people." {Newsday, 1/21/94}

D'Amato: Praised Fiske as "most honorable, most skilled" lawyers he knew. "I will tell you this about the integrity of Bob Fiske: It is second to none. I would have every confidence in any investigation undertaken by Bob Fiske." {NYT, 1/20/94}

D'Amato: "Fiske is a man of unflinching and uncompromising integrity. I think he's the kind of person who will bring out the truth for the American people so there will be no question as to the thoroughness and objectivity of this investigation." {AP, 1/20/94}

Dole: "People who know him think he is extremely well-qualified, is independent." {Dallas Morning News, 1/21/94}

Dole: "I've said as far as I know Robert Fiske is a man of integrity and he's had a lot of experience. ... Let's let Mr. Fiske get on with his work, and I think he'll do a thorough job." {Inside Politics, 1/25/94}

Leach: Called Fiske, "a quality appointment, an individual of appropriate background and integrity." {WSJ, 1/21/94}

Barbour: Said he was willing to "give him the benefit of a doubt." {USA Today, 1/21/94}

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	M.K. Friedrich to M.K. Friedrich re: Subpeona (1 page)	02/08/1996	P5

COLLECTION:

Clinton Presidential Records
NSC Email
MSMail-Record (Sept 94-Sept 97) ([Vince Foster; Death; Suicide])
OA/Box Number: 590000

FOLDER TITLE:

[07/25/1995-09/03/1996]

2006-1080-F
ds415

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

M S M a i l

DATE-TIME 08 February 96 15:31
FROM Friedrich, M. K.
CLASSIFICATION UNCLASSIFIED
SUBJECT Subpeona [UNCLASSIFIED]
TO Friedrich, M. K.
CARBON_COPY NO CC's on THIS MESSAGE
TEXT_BODY

I talked w/ Alan Kreczko today regarding the subpeona issued to the White House in relation to the White House Travel Office. In referencing the request (#8) I asked if I needed to submit a document I had made to myself immediately following an interview I had with Special Counsel Office in relation to the Death of Vincent Foster. At the same time, I pointed out in relation to the list of employees in the Counsel's Office on the back page (of the subpeona) that I thought maybe they had missed a person detailed from Justice during the timeframe mentioned "Cynthia McNamus" I told Alan that I just remember her name from my personnel days and they he may want to pass it along.

I further explained that this document was prepared for my own use - a referencing document - in case I'm ever called again, at least I'd have some idea of what I said. Alan said he would check with WH Counsel and get back to me.

He called a short time after and said I should submit the document. I brought it over to his office and explained that the Special Counsel Office told me that I shouldn't discuss this with anyone else and since this is a complete accounting of my relocation that I did have some hesitation in turning it over - but at the same time didn't want them to think I was hording it. Alan said he would review it but wasn't sure that it would actually be submitted.

RECORD OF MY CONVERSATION W/ ALAN KRECZKO